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AT OUR NEW AND WELL AP-
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AT AUCTION!

SATURDAY, JAN. 14, 1905,
AT 12 O'CLOCK NOON.

By order of

Mortgagees

We Will Sell—

HORSES, SURREYS, PHAETONS,
BUGGIES, CARRIAGES, WAGONS,
the beautiful TALLY-HO-COACH "EL
CAPITAN," entirely new with seating
capacity for 18 people; HARNESS,
SADDLES, TOOLS, Implements and all
the other goods, chattels and effects of
the—

AMERICAN STABLES

on Richards street between Merchant
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This is a rare opportunity to purchase
Vehicles of all kinds and gentle and
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Real Estate Agents and Auctioneers,
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TUESDAY, JAN. 17, 1905.

Auction Sale

AT

**OUR NEW
Salesrooms**

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FISHER ABLES CO., LTD.

Real Estate Agents & Auctioneers, Ac-
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AT AUCTION

WEDNESDAY, FEB. 1, 1905.

Upon the premises, No. 732 Kinua
street, We will sell by order of W. H.
Pfluger, Esq., at his residence, No.
732 Kinua street, mauka side a few
doors Waikiki of Alapai street.

**Household
Furniture**

Consisting of: Cane and Wicker La-
nai Chairs, a new Soller Piano, Orna-
ments, Rugs, Couches, Settees, Ebony
Tables, Pedestals, fine large extension
Dining Table, Oak Sideboard, Cutlery,
Plated Ware, Crockery, China, Double
and Single Iron and Brass Bedsteads,
Wardrobes, Bureaus, Mosquito Nets,
Bed Linen, Table Linen, Elegant Black
Walnut Chambers Sets, Chiffoniers,
Gurney Refrigerator, Sunrise Wood
Stove, like new; Jewel Gasoline Range,
Meat Safe, Cooking Utensils, Water
Cooler, Provisions, Glassware, Hose,
etc., etc., etc.

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countants, etc.
Cor. Fort and Queen Streets.

**A \$15 Panama
Hat for \$10**

\$15 is the regular price every-
where else in the city. Prior to
my closing-out sale I sold the
same hat for \$15.

Come and examine the straw
and the fineness of the weave and
see if it compares with \$15 hats
you have seen elsewhere. It must
do so, because it is a \$15 hat.

It is yours for \$10 at

I. Livingston's

1075 Bishop St.
Alexander Young Bldg.

PINKHAM'S UNINVENTED MACHINE

(Continued from Page 1.)

BEARDSLEE \$5000 PROPOSITION.
After much discussion Mr. Beardslee
offered to personally undertake to fur-
nish to this company a Pinkham ma-
chine, to be furnished in seven months,
for the sum of \$5000, the machine to
belong to Mr. Beardslee and his as-
signs after the job was completed.

The objection was made that the
contract called for completion in thir-
teen months and if seven were con-
sumed in securing a machine there
would not be time to finish in the re-
maining six months.

Mr. Beardslee replied that he thought
the machine could be built in less than
seven months, but that he must ask
for seven, as some experimenting must
be done; also that if the building was
not done on time there would be no
difficulty in getting an extension, if
it were made known that Pinkham
caused the delay.

To the objection that if the con-
tractor paid for the machine, it should
belong to the contractor, Mr. Beards-
lee replied that the machine would be
furnished on no other terms.

Mr. Beardslee finally reduced his
proposition to writing and delivered it
to Mr. Amweg. He stated, however,
that he did not want it to appear as
coming from him and he therefore
drew it in the form of a letter to be
written by this company to him, as-
suring Mr. Amweg that immediately
upon its receipt, the proposition would
be accepted by him and he would per-
sonally see to it that Pinkham carried
out its terms.

This letter, in Mr. Beardslee's hand-
writing, I now have.

AMWEG'S NEXT MOVE.

The foregoing state of facts, with
much more of detail, was thereupon
laid before Mr. Holloway, Superintend-
ent of Public Works. It was urged up-
on him that the specifications did not
on their face require blocks made un-
der hydraulic pressure; that they were
inconsistent, in that the plan showed
blocks of a type made only by hand;
that it was impossible to make the
blocks called for, under pressure, be-
cause no machine existed which could
make them; that contractors should
not be compelled to bid on a contract
which could be carried out only by the
use of an uninvited machine, under
control of a government official su-
pervising the job. He was requested
to permit the contractor to proceed
with the contract, making the blocks
by the standard hand method.

Mr. Holloway refused the request,
stated that there were a number of
machines capable of making concrete
blocks under pressure, in accordance
with the specifications, and insisted
that the contractor proceed with the
work.

This company asked that the matter
be referred to the Attorney General
for an opinion. This was done and an
opinion obtained, which dealt entirely
with an undisputed law point, and did
not cover the grounds involved.

Mr. Holloway then suggested that
the matters in issue be arbitrated.
Arbitration was considered, but the
points to be arbitrated could not be
agreed upon in such form as, in the
opinion of the contractor, to fairly de-
cide the matter.

**NO PRESSURE MACHINES AVAIL-
ABLE.**

Mr. Holloway thereupon peremptorily
ordered the contractor to proceed, fur-
nishing the names and addresses of
four makers of machines which he
claimed would make concrete blocks
called for by the specifications.

The contractor, desiring to carry out
the contract if possible, Mr. Amweg
thereupon went to San Francisco and
made an exhaustive investigation of
concrete block pressure machines.

He found that for years experiments
have been carried on by many people,
to construct a machine that would
make concrete blocks by hydraulic
pressure;

That no hydraulic machine has yet
been invented which makes blocks of
the size or type prescribed in the spe-
cifications of this contract;

That no machine has yet been in-
vented which makes blocks under hy-
draulic pressure, of any type, except
large plants for factory purposes where
blocks are made on a large scale for
sale. Moreover, the blocks so made
are of radically different type from
those prescribed in the specifications;

That of the four manufacturers
whose names were furnished by Mr.
Holloway, two make only hand ma-
chines, and two make factory plants
of a character above referred to. One
only had made a portable machine,
which it had advertised. Mr. Amweg
entered into negotiations for this ma-
chine, but found that the company had
discontinued its manufacture, as it was
unsatisfactory; that they were still ex-
perimenting with it, and hoped to per-
fect it; that they would make such a
machine if desired, but would not guar-
antee that it would do the work, and
recommended a hand machine made by
themselves, as being the best on the
market.

**CONTRACTOR CONSENTED TO
CANCEL CONTRACT.**

Meanwhile the contractor had, at the
request of the Governor, made a full
statement to him of his position, in-
cluding many details not included
herein.

Before considering the subject the
Governor, in writing, inquired if he re-
quested the cancellation of the con-
tract, whether the contractor would
consent thereto.

The contractor replied in writing, on
December 8, 1904, that it would cancel
the contract if the Governor requested
it. Such consent has never been with-
drawn and still stands.

About this time Mr. Holloway again

made demand on the contractor to pro-
ceed with the contract, threatening to
notify its bondsmen if it did not com-
ply with his request.

**THURSTON ADVISES CAMPBELL
CONTRACT IS ILLEGAL.**

Mr. A. N. Campbell, one of the bond-
smen, thereupon obtained much evidence
upon the subject of the legality and
fairness of the specifications, not there-
before available to the contractor, and
requested legal advice from L. A.
Thurston as to the legal status of the
contract and the bondsmen's responsi-
bilities.

Mr. Campbell was advised by his
counsel that for various reasons the
Insane Asylum contract was invalid,
and illegal; that under the recent de-
cision of the supreme court in the
Brewer wharf case, it cannot be en-
forced, and the contractor would be
subject to be enjoined from proceed-
ing with the building, even though it
used blocks manufactured under hy-
draulic pressure; and that it would be
liable to lose all the money that it
expended upon the contract.

Mr. Campbell thereupon notified this
company that he was unwilling that it
should proceed with the contract, and
requested that it so notify the govern-
ment.

**CASTLE AND WITHINGTON AD-
VISE CONTRACT IS VOID.**

Mr. Campbell's letter and the legal
opinion upon which it is based were
thereupon referred to Castle & With-
ington, the attorneys for this company,
and they have corroborated the con-
clusions reached by Mr. Thurston, ad-
vising us that the specifications and
surrounding circumstances are such as
to render the contract illegal and to
make it impossible for this company to
hold the contract, even with the con-
sent of the government.

**CONTRACTORS RELUCTANTLY
LET GO.**

This company is therefore reluctant-
ly forced to the conclusion:

First. That under the facts and cir-
cumstances surrounding this contract,
for which it is in no wise responsible,
and under the legal advice of responsible
counsel, it cannot be forced to proceed,
nor can it proceed if it so wishes, with
the literal execution of the contract,
which requires an impossibility.

Second. That it cannot proceed un-
der a modification thereof eliminating
the pressure clause, because this would
so change the original contract as to
subject the contractor to injunction at
the hands of rival contractors, who
stand ready to take such action were
the modification permitted by the gov-
ernment.

Third. That the evidence that the
specifications are purposely drawn so
as to unfairly exclude competition on
even terms is so strong that it is im-
possible for any contractor to safely
bid upon them upon any future call for
tenders, if such there be.

**CONTRACT WOULD HAVE BEEN
PROFITABLE.**

It is with great reluctance that I am
obliged to do this, as there is a good
margin of profit in the price bid by
this company, provided it is permitted
to use standard concrete constructing
apparatus, instead of its being re-
quired to use a machine which does not ex-
ist, and to pay tribute to officers of this
government to try and invent such a
machine, which when invented, will be-
long to such officers and not to the
contractor who pays for it.

I wish to corroborate the statement
made by other contractors that a brick
building so planned as to be an equiv-
alent in strength, finish and water-
proof qualities, with the concrete build-
ing designed by Mr. Beardslee, can be
built for less money than such con-
crete one. The brick building describ-
ed in the specifications is not an equiv-
alent of the concrete one, but is a much
more elaborate and expensive one. I
desire to further call your attention to
the fact that the specifications are so
incomplete and imperfect that there
must necessarily be extras to a large
amount in order to properly complete
the building fit for occupation.

**FAIR SPECIFICATIONS AND RE-
ADVERTISING ASKED.**

In the interest of fair, honest deal-
ing, of the general public and of the
contractors of Honolulu who have
through no fault of their own, been
compelled to waste much valuable
time upon this matter, I respectfully
request:

First. That the specifications for the
Insane Asylum may be so changed as
to render it possible for all intending
contractors to bid on a fair and equal
basis.

Second. That if tenders are called
for a concrete building, the require-
ments may be so modified that stand-
ard apparatus for making concrete
blocks may be used.

Third. That provisions which unfair-
ly exclude brick construction may be
eliminated.

Fourth. That when so changed, ten-
ders may again be called for, to build
the Insane Asylum.

Enclosed herewith please find copies
of the opinions of counsel rendered to
this company and its bondsmen, in-
cluding evidence secured by such
bondsmen, above referred to.

I have the honor to remain,

Your obedient servant,

CHAS. H. GILMAN,
President American-Hawaiian Engi-
neering & Construction Company,
Limited.

December 22, 1904.

Dear Sir: I am a surety on the
bond of the American-Hawaiian En-
gineering & Construction Company, to
secure the performance of the contract
with the government, to construct the
Insane Asylum at Honolulu in thir-
teen (13) months.

The contractors are desirous of go-
ing on with the contract, provided
they are not required to do the im-
possible, claiming that there is good
profit in it. I do not wish to interfere
with their doing so if it is safe for
them to go on; but certain questions
have arisen in connection with the con-
tract which make it necessary for me
to know their legal status in the mat-
ter, as bearing on my responsibilities. I
therefore request that you will ex-
amine the contract and correspond-
ence, which the contractors will place
at your disposal, and such other in-

formation as may be available, and
advise me upon the following points,
viz.:

The contractor claims that no ma-
chine exists which will make the con-
crete blocks, under 400 lbs. pressure
to the square inch, called for by the
contract; but that such blocks can be
perfectly constructed by standard hand
tamping apparatus, which it is de-
sirable of using.

Question 1. If this claim of the con-
tractor is correct, will it be legally
justified in proceeding with the con-
tract, using such hand apparatus and
ignoring the pressure clause upon the
theory that it requires a commercial
impossibility, if the Superintendent of
Public Works refuses his consent?

Question 2. If the Superintendent
consents to ignore the pressure clause,
will the contractor be safe in going
ahead with the work, or would it be
liable to be enjoined?

Question 3. If this contractor can-
not proceed except by complying with
the pressure clause, can the govern-
ment compel it to go on with the con-
tract or hold the bondsmen if it does
not?

The contractor states that the spe-
cifications are unfairly drawn in sev-
eral respects, for the apparent pur-
pose of shutting out or hampering
competition and giving a particular
company, the Concrete Construction
Co., an advantage over the bidders.
Notwithstanding this the contractor is
desirous of going on with the work if
it can safely do so.

Question 4. Does the evidence, in
your opinion justify this claim?

Question 5. If it does, in view of
the fact that the Concrete Construction
Co. did not get the contract, is the
American-Hawaiian Co. safe in going
on, if other obstacles can be removed;
or would it be liable to be stopped by
injunction, on the ground that there
had not been fair competition, or for
other reason?

Question 6. If the contractor is
stopped by injunction for any of the
foregoing reasons, can it recover from
the government for labor or material
put into the job up to that date?

Question 7. What course do you
advise me to pursue?

Yours very truly,
A. N. CAMPBELL.

Honolulu, Dec. 30, 1904.

Dear Sir: In reply to your letter of
December 22d, requesting answers to
certain questions relating to the In-
sane Asylum contract and your liabil-
ities thereunder as surety on the bond
of the contractor if it proceeds with
the work, I would say that I have care-
fully examined all of the documents
and statements submitted to me and
taken a number of additional state-
ments bearing upon the subject, and
have reached the following conclusions,
viz.:

Reply to questions 1 and 2: I am of
opinion that the clause requiring the
concrete blocks to be made under a
pressure of 400 pounds to the square
inch is so vitally an integral part of
the contract that it cannot be legally
ignored, or waived, either with or
without the consent of the Superin-
tendent of Public Works.

If such course were attempted with-
out the consent of the government, the
Superintendent of Public Works could
refuse to pay under the contract. If
the superintendent consented, it would
be the duty of the auditor to refuse
payment, and if he did not do so, any
taxpayer could, in my opinion, enjoin
payments on the contract.

The reason for this opinion is that
the estimate of cost of hand-tamping
apparatus is \$500. The lowest estimate
of cost of a power press is for the so-
called "Pinkham" machine, which is
valued at \$5,000.

The cost of the block-making ap-
paratus must be included in the cost
of the building.

In the case of the "Pinkham" ma-
chine this is specifically so, as the only
proposition to the contractor is that it
shall pay \$5,000 with which the ma-
chine shall be built, and for the use
of it, and when the asylum is complet-
ed the machine shall revert to the in-
ventor, or whoever the owner may be.

It is therefore manifest that the
building will cost at least \$4,500 more
if built of blocks made under pressure
than if made with blocks made in the
ordinary way.

The taxpayers are entitled to this
saving and not the contractor.

The law does not permit the advertis-
ing of bids on one basis, and the car-
rying out of the contract on a radical-
ly different one. This would prevent
fair competition, which is required by
the general law, as well as by Ha-
waiian statute.

The recent supreme court decision in
the Brewer wharf case is conclusive on
this point. It says:

"The object of all such statutory pro-
visions is to prevent favoritism, cor-
ruption, extravagance and improvi-
dence in the awarding of all public
contracts."

If the contractor was permitted to
ignore the pressure clause it would be
rank favoritism, and unfair to other
contractors who based their bids on
the cost of pressure blocks, or who
might have been prevented from bid-
ding by the presence of the pressure
clause.

As a practical fact, the statement is
made by at least five responsible con-
tractors that the pressure clause pre-
vented them from bidding, and one of
them has assured me that he will begin
injunction proceedings if the American-
Hawaiian Company attempts to con-
struct the building with hand-tamped
blocks.

If it is impossible to carry out the
pressure clause, the contract is void,
and the only course open is for the
government to re-advertise the con-
tract, omitting the pressure clause.

Answer to question 3: If it is phys-
ically impossible to make the blocks
required by the contract, the contrac-
tor and its bondsmen cannot be re-
quired to do impossibilities, and would
be absolved from going on with the
contract.

If it is impossible except by means
of a machine which has never been
built, and which exists only in the
brain of its inventor, and concerning
which there is still a well-founded
doubt as to whether it will do the work
or not, I am of the opinion that the
not compel the contractor to buy and

SPECIAL SALE WOOLEN DRESS FABRICS, GREAT VALUES

We are offering this week a large line of the newest
woolen materials at reduced prices.

An elegant line of POPLAR CLOTH, in new shades; 36-inch
Special..... **35c**
All-wool ALDINE SUITING; 36-inch. Special value
at..... **45c**
A new line of all-wool ALBATROSS, in new evening shades;
36-inch. Special..... **60c**
An excellent new line of COVERT CLOTH; 36-inch.
Special..... **65c**
SATIN STRIPE CHALLIES; all-wool
Special..... **40c**
BEST VALUES IN ALPACCA; 36-inch
at..... **65c**

CLEARING SALE IN LADIES' SHIRT WAISTS
Our entire line on sale less than manufacturer's cost.

\$1.50 Waists now \$1.00	\$1.75 Waists now \$1.25
\$2.00 Waists now \$1.35	\$2.25 Waists now \$1.75
\$2.50 Waists now \$1.90	\$2.50 Waists now \$2.50
\$5.50 Waists now \$3.50	\$6.50 Waists now \$4.50

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AND ABSOLUTE PURITY IS
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For Ladies' Wear,

PRICE \$2.50.

This popular Shoe is the "GOODYEAR" welt, and pos-
sesses superior wearing qualities, besides excellent style and
comfortable fit. It is made on the very latest last, with the
new pointed toe.

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1051 FORT STREET.

contractor is absolved from the obli-
gation to go on with the contract.

Reliable engineering authorities state
that serious doubt does exist concern-
ing the ability of the Pinkham machine
to do the work required, and that
whether it is ultimately successful or
not, it will doubtless require much ex-
perimenting with before it can be made
a success. I do not think that the con-
tractor can be required to depend upon
the possibilities of Mr. Pinkham's the-
oretical invention being ultimately suc-
cessful, or to pay for the experiments
necessary to prove it, and no other
method of making this machine avail-
able is suggested.

Another phase of the question is pre-
sented if there are machines already
invented which are physically capable
of making the blocks in question, but
which cannot practically and commer-
cially do so, by reason of the great
cost.

On this point the authorities differ;
some holding that the contract must
be performed if it is physically possi-
ble, even though the cost is ruinous;
others hold the more moderate view
that it must be reasonably practicable.

In the case in question the evident
intention of the parties was that the
blocks should be made here. In fact,
the Superintendent of Public Works
required an agreement from the con-
tractor that such would be done, as a
condition of signing the contract.

From the evidence laid before me it
appears to be conclusively shown that
although for a long time past attempts
have been made to invent portable
pressure machines to make concrete
blocks, no such attempt has as yet
been successful.

The Superintendent of Public Works
furnished the contractor with the
names of four machines supposed to be
capable of doing the work. The con-
tractor has communicated with them
all. Two make only hand machines.
One makes only large factory ma-
chines, and the fourth, although adver-
tising to furnish portable pressure
machines, stated that they had discon-
tinued making them, as they were un-
satisfactory and needed further per-
fection, and they are now making only
hand-tamping machines.

The contractor, after diligent inquiry,
can find no other machine capable of
meeting the contract.

The question then is, can the con-
tractor be compelled to buy a large and
expensive factory plant and erect it in
Honolulu, with which to carry out this
contract?

This is a question that can only be
finally answered by the court. My
opinion is, however, that the court
would take the surrounding circum-
stances into consideration, and would
not compel the contractor to buy and

(Continued on page 7.)